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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,304	03/01/2004	John S. Murphy	RYLZ 2 00658-1	9303
27885	7590	07/13/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			GREENE, JASON M	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/790,304

Applicant(s)

MURPHY ET AL.

Examiner

Jason M. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*; 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 30-34 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 30-34 and 39-44 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on 25 October 2004 and 11 April 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Yung reference. As previously noted, the declaration has not been signed by inventor David DiNunzio. While Applicants have presented evidence that the non-signing inventor is no longer available for signature, Applicants have not filed a petition under 37 CFR 1.47, as required by MPEP 715.04[R-2]. The Examiner notes that the declaration would be effective to overcome the Yung reference provided the required petition is filed and granted.

### ***Response to Arguments***

2. Applicant's arguments filed 11 April 2005 have been fully considered but they are not persuasive. As noted above, the declaration filed under 37 CFR 1.131 is ineffective to overcome the Yung reference

Additionally, upon further consideration, a new ground(s) of rejection is made in view of the Reichow et al. and Sepke et al. references.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Yung '350.

With regard to claim 1, Yung '350 discloses a canister vacuum cleaner (10) comprising a body (20) defining a suction inlet (not numbered) and an exhaust outlet (not numbered), a suction source (14) contained in said body and located fluidically between said suction inlet and said exhaust outlet, a dirt cup (32) releasably connected to said body, said dirt cup defining a dirt separation chamber and an airstream outlet (84) that releasably mates with said suction inlet when said dirt cup is connected to said body, said dirt separation chamber conformed to impart a rotational flow pattern to an airstream passing therethrough whereby contaminants entrained in said airstream are separated therefrom and deposited in said dirt cup, and a filter (76) located in said dirt separation chamber of said dirt cup in covering relation with said airstream outlet in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

With regard to claim 7, Yung '350 discloses the filter (76) being releasably connected to the dirt cup (32) in Figs. 1-7 and col. 4, lines 27-62.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Meijer et al.

Yung '350 discloses a first portion (84) of the dirt cup defining said airstream outlet and a second portion (46) of the dirt cup defining an open entrance to the dirt separation chamber, wherein the canister vacuum cleaner includes a hose (22) communicating with said dirt separation chamber of said dirt cup through a hose fitting (92), wherein an outlet of said hose fitting is directed obliquely toward an interior wall (38) of said dirt cup, whereby an airstream entering said dirt separation chamber from said outlet of said hose fitting is directed obliquely at said interior wall of said dirt cup in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the body comprising a cover that is selectively located in covering relation with said open entrance of said dirt cup when said dirt cup is connected to said body, wherein said cover is pivotably connected to a main portion of said body and pivots on an arc between a first position spaced away from said open entrance of said dirt cup and a second position in covering relation with said open entrance of said dirt cup, wherein a hose communicates with said dirt separation

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chamber of said dirt cup through said movable cover, the canister vacuum cleaner further comprising a hose fitting connected to and extending through said cover, said hose fitting comprising an inlet conduit projecting outwardly away from said cover external to said body and an outlet conduit located adjacent said open entrance of said dirt cup when said dirt cup is connected to said housing and said cover is placed in covering relation with said open entrance of said dirt cup, wherein said outlet conduit of said hose fitting is directed obliquely toward an interior wall of said dirt cup when said cover is placed in covering relation with said open entrance of said dirt cup whereby an airstream entering said dirt separation chamber from said outlet conduit of said hose fitting is directed obliquely at said interior wall of said dirt cup.

Meijer et al. discloses a similar canister vacuum cleaner including a body (1) comprising a cover (41) that is selectively located in covering relation with an open entrance of a dirt cup (11) when said dirt cup is connected to said body, wherein said cover is pivotably connected to a main portion of said body and pivots on an arc between a first position spaced away from said open entrance of said dirt cup and a second position in covering relation with said open entrance of said dirt cup, wherein a hose (45) communicates with said dirt separation chamber of said dirt cup through said movable cover, the canister vacuum cleaner further comprising a hose fitting (43) connected to and extending through said cover, said hose fitting comprising an inlet conduit projecting outwardly away from said cover external to said body and an outlet conduit located adjacent said open entrance of said dirt cup when said dirt cup is connected to said housing and said cover is placed in covering relation with said open

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entrance of said dirt cup, wherein said outlet conduit of said hose fitting is directed toward an interior said dirt cup when said cover is placed in covering relation with said open entrance of said dirt cup in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister vacuum cleaner of Yung '350 to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

7. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Meijer et al.

Yung '350 discloses a bagless canister vacuum cleaner (10) comprising a main housing (20) defining an airflow inlet (not numbered), an airflow outlet (not numbered), and a receiver region (not numbered) adapted to receive a dirt cup (32), a suction source (14) located in said housing and operational to establish and maintain an airstream that flows from said airflow inlet to said airflow outlet, a dirt cup (32) releasably coupled to said receiver region of said main housing, said dirt cup comprising, an interior wall (38) defining a dirt separation chamber conformed to impart a rotational flow path to a dirty airstream passing therethrough whereby contaminants are separated from the dirty airstream and deposited in said dirt cup, an open first end in communication with said dirt separation chamber, and an airstream outlet (84) from

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said dirt separation chamber, said dirt cup releasably coupled to said main housing with said airstream outlet of said dirt cup mated with said airflow inlet of said main housing, a filter assembly (76) releasably connected to said dirt cup and located in said dirt separation chamber, said filter assembly comprising a filter element located in covering relation with said airstream outlet of said dirt cup, and a hose (22) and a hose fitting (92) interconnected to said hose, said hose fitting comprising a first portion projecting outwardly away from the dirt cup and a second portion projecting into said dirt separation chamber adjacent said open first end of said dirt cup, said second portion directed obliquely toward said interior wall of said dirt cup defining said dirt separation chamber in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the vacuum cleaner comprising a cover connected to said housing, said cover movable between an open position, where said cover is disengaged from said dirt cup, and a closed, operative position where said cover is placed in covering relation with and blocks said open first end of said dirt cup, said cover, when located in said closed, operative position, preventing separation of said dirt cup from said main housing, or the hose fitting interconnecting the hose to the cover, said first portion of said hose fitting projecting outwardly away from said cover.

Meijer discloses a vacuum cleaner comprising a cover (41) connected to a housing (1), said cover movable between an open position, where said cover is disengaged from said dirt cup, and a closed, operative position where said cover is placed in covering relation with and blocks said open first end of said dirt cup, said cover, when located in said closed, operative position, preventing separation of a dirt



cup (11) from said main housing, and a hose fitting (43) interconnecting a hose (45) to the cover, a first portion of said hose fitting projecting outwardly away from said cover and a second portion projecting into said dirt cup, wherein said cover includes a handle (79) to facilitate manual movement of the cover between the open and closed positions in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister vacuum cleaner of Yung '350 to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

8. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Meijer et al. as applied to claim 30 above, and further in view of Miyake et al.

Yung '350 discloses the vacuum cleaner comprising a plurality of wheels (26) for movably supporting said main housing (20) and said dirt cup (32) on a support surface when said dirt cup is coupled to said receiver region of said main housing, wherein said dirt cup comprises a handle in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 and Meijer et al. do not disclose at least one of said plurality of wheels connected to the handle of said dirt cup.

Miyake et al. discloses a similar canister vacuum cleaner (120) having one of a plurality of wheel assemblies (186) connected to a dirt cup (123) in Fig. 3 and col. 6, lines 10-62.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the wheel connected to the dirt cup of Miyake into the canister vacuum cleaner of Yung '350 and Meijer et al. to provide direct support means for the dirt cup to allow the vacuum cleaner to be manufactured without the portion of the body supporting the dirt cup to reduce manufacturing costs, as suggested by Miyake et al. in Fig. 3.

Yung '350, Meijer et al., and Miyake et al. do not disclose the at least one wheel connected to the dirt cup being connected to the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to shift the location of the wheel from the base of the dirt cup to the handle of the dirt cup in the shifting the location of parts without otherwise modifying the operation of the device is merely a choice of design. See *In re Japikse*, 86 USPQ 70.

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Reichow et al.

Yung '350 discloses a bagless vacuum cleaner (10) comprising a body (20), and a dirt cup (32) releasably connected to and selectively separable from said body, said

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dirt cup comprising a handle (not numbered) in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the dirt cup a having a pour spout.

Reichow et al. discloses a vacuum cleaner having a dirt cup (22) having a pour spout (154) in Fig. 3 and col. 5, line 38 to col. 6, line 6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the pour spout of Reichow et al. into the dirt cup of Yung '350 to facilitate the removal of the collected dirt from the dirt cup.

10. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Watson.

Yung '350 and Reichow et al. do not disclose the handle and pour spout being located opposite each other.

Watson teaches locating a pouring spout opposite a handle in Fig. 1 and col. 6, lines 10-12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the opposite spout and handle arrangement of Watson into the dirt cup of Yung '350 and Reichow et al. to provide for easier handling of the dirt cup while emptying the contents.

11. Claims 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Shirayanagi et al.

Yung '350 and Reichow et al. do not disclose the vacuum cleaner comprising a second handle, wherein the second handle is connected to the body or a strap connected to said body, said strap adapted for securing said bagless vacuum cleaner to a body of a user.

Shirayanagi et al. discloses a vacuum cleaner (2) having a handle (not numbered) connected to the body and a strap (84) connected to the body, said strap adapted for securing said bagless vacuum cleaner to a body of a user in Fig. 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the handle and strap of Shirayanagi et al. into the vacuum cleaner of Yung '350 and Reichow et al. to allow the person using the vacuum cleaner to easily transport it.

12. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Meijer et al.

Yung '350 and Reichow et al. do not disclose the vacuum cleaner comprising a lid connected to said body and adapted for selectively covering an open end of said dirt cup, and a handle connected to the lid.

Meijer et al. discloses a vacuum cleaner comprising a lid (41) connected to said body and adapted for selectively covering an open end of a dirt cup (11), and a handle (79) connected to the lid in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister vacuum cleaner of Yung '350 and Reichow et al. to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

13. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Miyake et al.

Yung '350 discloses the vacuum cleaner comprising a plurality of wheels (26) connected to the body in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 and Reichow et al. do not disclose at least one wheel being connected to the dirt cup.

Miyake et al. discloses a similar canister vacuum cleaner (120) having one of a plurality of wheels (186) connected to a dirt cup (123) in Fig. 3 and col. 6, lines 10-62.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the wheel connected to the dirt cup of Miyake into the canister vacuum cleaner of Yung '350 and Reichow et al. to provide direct support

means for the dirt cup to allow the vacuum cleaner to be manufactured without the portion of the body supporting the dirt cup to reduce manufacturing costs, as suggested by Miyake et al. in Fig. 3.

14. Claims 39, 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sepke et al. in view of Reichow et al.

With regard to claim 39, Sepke et al. discloses a bagless vacuum cleaner (10) comprising a body (12) and a dirt cup (82) releasably connected to and selectively separable from said body, said dirt cup comprising a handle (140) in Figs. 1 and 2C and col. 3, line 17 to col. 4, line 47.

Sepke et al. does not disclose the dirt cup comprising a pour spout.

Reichow et al. discloses a similar vacuum cleaner having a dirt cup (22) comprising a pour spout (154) in Fig. 3, col. 4, lines 39-44 and col. 5, line 38 to col. 6, line 6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the pour spout of Reichow et al. into the dirt cup of Sepke et al. to facilitate the removal of the collected dirt from the dirt cup, as suggested by Reichow in col. 4, lines 39-44 and col. 5, line 38 to col. 6, line 6.

With regard to claim 41, Sepke et al. discloses the vacuum cleaner comprising a second handle (16), the second handle connected to said body in Figs. 1 and 2C and col. 3, lines 17-27.

With regard to claim 43, Sepke et al. discloses the bagless vacuum cleaner comprising a strap (352) connected to the body, the strap adapted for securing the bagless vacuum cleaner to the body of a user in Fig. 12 C, col. 1, lines 16-25 and col. 7, lines 4-6.

15. Claims 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichow et al. in view of Sepke et al.

With regard to claim 39, Reichow et al. discloses a bagless vacuum cleaner (10) comprising a body (14) and a dirt cup (22) releasably connected to and selectively separable from said body, said dirt cup comprising a pour spout (154) in Figs. 1-3 and col. 3, line 10 to col. 4, line 51 and col. 5, line 38 to col. 6, line 6.

Reichow et al. does not disclose the dirt cup comprising a handle. Sepke et al. teaches a similar vacuum cleaner having a dirt cup (82) comprising a handle (140) in Figs. 1 and 2C and col. 3, line 17 to col. 4, line 47. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the handle of Sepke et al. into the dirt cup of Reichow et al. to

facilitate the handling of the dirt cup, as suggested by Sepke et al. in Figs. 1 and 2C and col. 3, line 17 to col. 4, line 47.

With regard to claim 41, Reichow et al. discloses the vacuum cleaner comprising a second handle (40), the second handle connected to said body in Fig. 1 and col. 3, lines 10-27.

16. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sepke et al. in view of Reichow et al. or Reichow et al. in view of Sepke et al. as applied to claim 39 above, and further in view of Watson.

Sepke et al. and Reichow et al. do not disclose the handle and pour spout being located opposite each other.

Watson teaches locating a pouring spout opposite a handle in Fig. 1 and col. 6, lines 10-12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the opposite spout and handle arrangement of Watson into the dirt cups of Sepke et al. and Reichow et al. to provide for easy handling of the dirt cup while emptying the contents, as suggested by Watson in Fig. 1.

***Allowable Subject Matter***



17. Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

18. The Examiner notes that the drawings filed on 1 March 2004 are acceptable. The previous objection to the drawings as being informal has been withdrawn.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (571) 272-1157. The examiner can normally be reached on Monday - Friday (9:00 AM to 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason M. Greene  
Examiner  
Art Unit 1724



jmg  
May 25, 2005

DUANE SMITH  
PRIMARY EXAMINER

  
5-26-05